

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

<p>ABDUL MOHAMMED,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>NATIONAL LABOR RELATIONS BOARD,</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 20-3178</p>
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**MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO DISMISS PETITION
FOR REVIEW FOR LACK OF JURISDICTION**

Respondent, the National Labor Relations Board (“Board” or “NLRB”), respectfully submits this Motion to Dismiss the Petition for Review filed by pro se Petitioner Abdul Mohammed. Mohammed asks this Court to review the decision of the Board’s General Counsel not to issue an unfair-labor-practice complaint for alleged violations of the National Labor Relations Act (“Act” or “NLRA”).¹ Because the Act grants the General Counsel “final authority” over prosecutorial decisions involving unfair-labor-practice charges, this Court lacks subject-matter jurisdiction to review the exercise of that authority.² Consequently, this Court should dismiss Mohammed’s Petition.

STATEMENT OF FACTS

Several years ago, Mohammed was a driver who provided personal transportation services using Uber Technologies, Inc.’s app-based ride-share platform. Mohammed and

¹ 29 U.S.C. §§ 151-169 (2012).

² *Id.* § 153(d).

Uber's business relationship eventually soured. On October 30, 2015, Mohammed filed an unfair-labor-practice charge against Uber with the Board's Region 13 office, located in Chicago, Illinois.³ Mohammed's charge, docketed as NLRB Case No. 13-CA-163062, alleged that Uber committed two violations of Section 8(a)(1) of the NLRA.⁴ First, on June 8, 2015, Uber allegedly told employees that they would be terminated if they attempted to discuss working conditions with other employees. Second, on June 15, 2015, Uber allegedly discharged Mohammed in retaliation for engaging in protected concerted activities.

The staff of Region 13, acting on behalf of the Board's General Counsel, investigated the charge. A controversy immediately arose regarding whether Mohammed and other similarly situated drivers were employees of Uber entitled to the protections of the Act or, instead, were independent contractors whose labor relations are not covered by the Act.⁵ Ultimately, Mohammed's charge and others raising the same question were referred to the Division of Advice, a component of the Office of the General Counsel, for a decision resolving this question. On April 16, 2019, the Associate General Counsel for the Division of Advice issued a memorandum concluding that Uber's ride-share drivers are

³ Mohammed's unfair-labor-practice charge is attached to this Motion as Exhibit A.

⁴ Section 8(a)(1) of the Act prohibits employer practices that "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed" in Section 7 of the Act. *Id.* § 158(a)(1). Section 7, in turn, recognizes the rights of employees "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." *Id.* § 157. In addition, Section 7 establishes that employees generally "have the right to refrain from any or all such activities." *Id.*

⁵ Section 2(3) of the Act defines "employee" broadly, but expressly excludes "any individual having the status of an independent contractor." *Id.* § 152(3). Because of this exclusion, an employer cannot violate Section 8(a)(1) when its conduct affects an independent contractor.

independent contractors under the common-law agency test, as explicated by the Board in *SuperShuttle DFW, Inc.*⁶ Therefore, the memorandum recommended that the pending charges against Uber be dismissed, absent withdrawal by the respective charging parties.

With the question of employee status resolved, on April 19, 2019, the Regional Director of Region 13 sent Mohammed a letter dismissing his charge.⁷ Mohammed exercised his right to appeal the dismissal directly to the General Counsel via the Office of Appeals.⁸ On October 21, 2019, the General Counsel denied Mohammed's appeal.⁹

ARGUMENT

This Court Lacks Subject-Matter Jurisdiction to Review the General Counsel's Refusal to Issue Unfair-Labor-Practice Complaints

A party seeking relief from a federal court must establish that the case or controversy fits within the court's "limited jurisdiction."¹⁰ This Court, like others in the federal system, "possess[es] only that power authorized by Constitution and statute, which is not to be expanded by judicial decree."¹¹ When a federal court's jurisdiction is in

⁶ 367 NLRB No. 75 (Jan. 25, 2019). A redacted copy of the Advice memorandum is included with Mohammed's Petition. It is also available on the NLRB's website at <https://apps.nlr.gov/link/document.aspx/09031d4582bd1a2e>.

⁷ The dismissal letter is attached to this Motion as Exhibit B.

⁸ Mohammed's appeal to the General Counsel and his accompanying brief in support are attached to this Motion as Exhibits C and D, respectively. To avoid burdening the record in this case, Exhibit D omits the 1,065 pages of attachments included with Mohammed's brief. At the Court's request or direction, the NLRB will file copies of the omitted attachments.

⁹ The appeal denial letter is attached to this Motion as Exhibit E.

¹⁰ *United States v. Alkaramla*, 872 F.3d 532, 534 (7th Cir. 2017) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)).

¹¹ *Alkaramla*, 872 F.3d at 534 (quoting *Kokkonen*, 511 U.S. at 377).

question, “[t]he burden of persuasion rests with the party asserting federal jurisdiction.”¹²

Here, Mohammed cannot satisfy that burden. Mohammed’s claims arise solely from the refusals of the General Counsel and his staff to issue an unfair-labor-practice complaint based on the charge Mohammed filed in Case 13-CA-163062. As shown below, it is well established that the General Counsel’s prosecutorial decisions are committed entirely to his or her discretion. For that reason, they are not subject to judicial review.

The NLRA establishes a five-seat Board whose members adjudicate unfair-labor-practice cases brought by the Board’s General Counsel.¹³ But it wasn’t always so. When the NLRA was originally enacted in 1935, both the prosecutorial and the adjudicatory functions of the NLRB were controlled by the Board itself.¹⁴ This lasted until 1947, when the Taft-Hartley Amendments to the Act created a new and independent office: General Counsel of the Board.¹⁵ It did so by adding Section 3(d) to the Act, which formally establishes the office and vests its occupant with “final authority, on behalf of the Board, in respect of the investigation of [unfair-labor-practice] charges and issuance of complaints.”¹⁶ That same section also directs the General Counsel to “exercise general

¹² *In re Safeco Ins. Co.*, 585 F.3d 326, 329, 330 (7th Cir. 2009).

¹³ 29 U.S.C. § 153(a) (creating the Board); *id.* § 153(d) (granting prosecutorial authority to the General Counsel of the Board); *id.* § 160(b) (empowering the Board to resolve unfair-labor-practice complaints).

¹⁴ *Baker v. Int’l Alliance of Stage Emps.*, 691 F.2d 1291, 1294 (9th Cir. 1982).

¹⁵ *Id.* at 1294-95. *Baker* misidentifies 1949 as the year these functions were separated.

¹⁶ 29 U.S.C. § 153(d).

supervision over [almost] all attorneys employed by the Board . . . and over the officers and employees in the regional offices.”¹⁷

The NLRB does not initiate unfair-labor-practice proceedings on its own accord, but acts only when a person files a charge alleging that another person has violated the Act.¹⁸ The charge “must be filed with the Regional Director for the Region in which the alleged unfair labor practice has occurred or is occurring.”¹⁹ Upon the filing of a charge, the Regional Director and field staff, under the General Counsel’s “general supervision,”²⁰ investigate the charge to determine whether it has merit and whether to issue a complaint.²¹

If a charge has merit and the Regional Director decides to issue a complaint, the complaint “may be disposed of by withdrawal before hearing, settlement, or formal adjudication.”²² In the case of formal adjudication, field staff prosecute the case on behalf of the General Counsel before an administrative law judge, who issues a decision at the conclusion of the hearing.²³ That decision is filed with the Board, and the parties then

¹⁷ *Id.*

¹⁸ *See* 29 U.S.C. § 160(b) (requiring a charge as a predicate to an unfair-labor-practice complaint).

¹⁹ 29 C.F.R. § 102.10 (2020).

²⁰ 29 U.S.C. § 153(d).

²¹ 29 C.F.R. §§ 101.4, 101.8.

²² *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 119 (1987).

²³ 29 U.S.C. § 160(c); *see also* 29 C.F.R. § 101.10(a) (“A duly designated administrative law judge presides over the hearing.”); *id.* § 101.11(a) (“At the conclusion of the hearing the administrative law judge prepares a decision . . .”).

have an opportunity to file exceptions.²⁴ Ultimately, the Board issues its own decision and order, which constitutes the final agency determination concerning the case.²⁵ At that time, an aggrieved person may petition an appropriate federal court of appeals to review the “final order of the Board.”²⁶

If, instead, the Regional Director decides that there are insufficient grounds to warrant issuance of a complaint, the Director “may, in his discretion, dismiss [the charge].”²⁷ A charging party may then appeal this decision to the General Counsel, pursuant to the Board’s Rules and Regulations.²⁸ If the General Counsel sustains the Regional Director’s decision, that is the end of the matter.

There is no provision in the Act or any other statute for review, by either the Board or the courts, of a decision by the General Counsel or a Regional Director to dismiss a charge. Such a decision does not constitute a reviewable “final order of the Board” under the Act.²⁹ Nor does the Administrative Procedure Act provide an avenue for review of a decision declining to issue an unfair-labor-practice complaint.³⁰

²⁴ 29 C.F.R. § 101.11(b) (“The administrative law judge’s decision is filed with the Board in Washington, DC”); *id.* § 101.12(a) (recognizing parties’ right to file exceptions).

²⁵ 29 C.F.R. § 101.12 (setting forth the decisional process in cases with and without exceptions).

²⁶ 29 U.S.C. § 160(f); *see also id.* § 160(e) (empowering the Board to apply for enforcement of its final orders).

²⁷ *United Food & Commercial Workers Union, Local 23*, 484 U.S. at 118.

²⁸ 29 C.F.R. § 102.19.

²⁹ *United Food & Commercial Workers Union, Local 23*, 484 U.S. at 128 (concluding that an act of the General Counsel, even when undertaken “on behalf of” the Board, “is not the same as an act ‘of the Board’ itself”).

³⁰ *Id.* at 130-33.

Indeed, Board or court review of charge dismissals would conflict with section 3(d) of the Act, which vests the General Counsel's with "final authority" over prosecutorial decisions.³¹ Even before 1947, when the Board itself determined whether to issue complaints, courts recognized that sometimes policy-laden considerations drove the exercise of this discretionary power. For this reason, a decision not to issue complaint "was not considered to be subject to judicial review."³² The Taft-Hartley Amendments of 1947 "delegated to the General Counsel the Board's authority to issue complaints. It did not, however, modify the terms of the underlying grant of authority."³³ Thus, Section 3(d)'s express grant of "final authority" over prosecutorial matters to the General Counsel confirms the Taft-Hartley Congress's intent to continue the previously recognized bar on judicial review of decisions not to issue unfair-labor-practice complaints.

In light of the Act's plain text and consistent history, the Supreme Court has repeatedly acknowledged the General Counsel's exclusive authority to decide whether an unfair-labor-practice complaint shall issue.³⁴ So, too, have the courts of appeals, including

³¹ 29 U.S.C. § 153(d).

³² *Baker*, 691 F.2d at 1294 (citing *Jacobsen v. NLRB*, 120 F.2d 96, 100 (3d Cir. 1941) (en banc)).

³³ *Id.* at 1295.

³⁴ See, e.g., *United Food & Commercial Workers Union, Local 23*, 484 U.S. at 122-23; *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 316 (1979) (describing the General Counsel's "unreviewable discretion" to refuse to issue a complaint); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 139 (1975) ("The practical effect of this administrative scheme is that a party believing himself the victim of an unfair labor practice can obtain neither adjudication nor remedy under the labor statute without first persuading the Office of General Counsel that his claim is sufficiently meritorious to warrant Board consideration."); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967) ("[T]he Board's General Counsel has unreviewable discretion to refuse to institute an unfair labor practice complaint.").

this Court.³⁵ These decisions are so numerous and consistent that an attorney who files a petition for review seeking review of a charge dismissal is subject to sanctions.³⁶

Here, Mohammed petitions for review of the “Advice Memorandum and Order of [the] NLRB” in Case 13-CA-163062.³⁷ That memorandum, signed by the Associate General Counsel for the Division of Advice, instructs the Board’s Region 13 office to dismiss Mohammed’s charge, absent withdrawal, because Uber drivers are independent contractors, not statutory employees.³⁸ In accord with the Advice memorandum, the Regional Director dismissed Mohammed’s charge.³⁹ Mohammed’s appeal of that dismissal was subsequently denied by the General Counsel.⁴⁰

These indisputable facts demonstrate that Mohammed seeks review of the prosecutorial decisions made by the General Counsel and by those attorneys and officers

³⁵ See, e.g., *Sparks v. NLRB*, 835 F.2d 705, 707 (7th Cir. 1987) (“[T]he principle that the decision by the General Counsel of the Labor Board not to file an unfair labor practices complaint is not judicially reviewable is a bedrock principle of labor law.”); see also *Saez v. Goslee*, 463 F.2d 214, 214-15 (1st Cir. 1972); *Williams v. NLRB*, 105 F.3d 787, 791 n.3 (2d Cir. 1996); *Terminal Freight Co-op Ass’n v. NLRB*, 447 F.2d 1099, 1101-02 (3d Cir. 1971); *Wellington Mill Div., W. Point Mfg. v. NLRB*, 330 F.2d 579, 590-91 (4th Cir. 1964); *Smith v. Local No. 25, Sheet Metal Workers Int’l Ass’n*, 500 F.2d 741, 747 (5th Cir. 1974); *Jackman v. NLRB*, 784 F.2d 759, 764 (6th Cir. 1986); *Royal Typewriter Co. v. NLRB*, 533 F.2d 1030, 1040 (8th Cir. 1976); *Baker*, 691 F.2d at 1293-95; *Gen. Drivers, Chauffeurs, & Helpers, Local 886 v. NLRB*, 179 F.2d 492, 494 (10th Cir. 1950); *Amerijet Int’l, Inc. v. NLRB*, 520 F. App’x 795, 797 (11th Cir. 2013); *Patent Office Profl Ass’n v. FLRA*, 128 F.3d 751, 753 (D.C. Cir. 1997).

³⁶ *Sparks*, 835 F.2d at 707. To be clear, the NLRB does not seek an award of sanctions in this case since Mohammed appears pro se.

³⁷ Petition for Review at 1, ECF No. 1-1.

³⁸ *Id.* at 5-17. The cited page numbers correspond to those appearing in the ECF header of the Petition.

³⁹ See Ex. B at 1.

⁴⁰ See Ex. E at 1.

subject to the General Counsel's supervision. There is no "final order of the Board"⁴¹ for this Court to review, and nothing in the Act or elsewhere permits any sort of judicial review to occur on this set of facts. In short, the General Counsel's "final authority"⁴² to investigate and dispose of unfair-labor-practice charges is precisely that: final. The garden variety conduct challenged by Mohammed in this case falls squarely within the zone of unreviewable prosecutorial discretion carved out by the Act.

CONCLUSION

For these reasons, this Court should dismiss Mohammed's Petition for Review of the General Counsel's refusal to issue an unfair-labor-practice complaint.

Respectfully submitted,

WILLIAM G. MASCIOLI
Assistant General Counsel

s/Kevin P. Flanagan
KEVIN P. FLANAGAN
Supervisory Attorney
kevin.flanagan@nlrb.gov
(202) 273-2938

National Labor Relations Board
Contempt, Compliance, and Special
Litigation Branch
1015 Half Street, S.E.
Washington, DC 20570

Dated: December 9, 2020

⁴¹ 29 U.S.C. § 160(f).

⁴² *Id.* § 153(d).

**Certificate of Compliance With Type-Volume Limit,
Typeface Requirements, and Type-Style Requirements**

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 2399 words.

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s/Kevin P. Flanagan

Attorney for National Labor Relations Board

Dated: December 9, 2020

**CERTIFICATE OF SERVICE****Certificate of Service When All Case Participants Are CM/ECF Participants**

I hereby certify that on _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ _____

**CERTIFICATE OF SERVICE****Certificate of Service When Not All Case Participants Are CM/ECF Participants**

I hereby certify that on December 9, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

counsel / party:

Abdul Azeem Mohammed

address:

Apt. C, 258 E. Bailey Road, Naperville, IL 60565

s/ Kevin P. Flanagan

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
13-CA-163062	10/30/15

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Uber Technologies Inc.		b. Tel. No. (773)309-4286
		c. Cell No.
d. Address (street, city, state ZIP code) 370 N Carpenter St Chicago, IL 60607-1223	e. Employer Representative Travis Kalanick - CEO	f. Fax No.
		g. e-Mail
		h. Dispute Location (City and State) Chicago, IL
i. Type of Establishment (factory, nursing home, hotel) Transportation	j. Principal Product or Service Ride Sharing	k. Number of workers at dispute location 35000

l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

On about June 8, 2015, the Employer interfered with rights protected by Section 7 of the Act by telling employees that they would be terminated if they attempted to discuss working conditions with other employees.

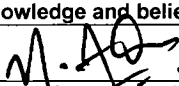
On about June 15, 2015 the Employer discriminated against employee Abdul Mohammed by discharging him in retaliation for and or in order to discourage protected concerted activities.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Abdul Mohammed

4a. Address (street and number, city, state, and ZIP code) 258 E Bailey Rd, Apt C, Naperville, IL 60565-1439	4b. Tel. No. (630)597-3098
	4c. Cell No.
	4d. Fax No.
	4e. e-Mail mohammed80@icloud.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. (630)597-3098
By: 	Abdul Mohammed	Office, if any, Cell No.
(signature of representative or person making charge)	Print Name and Title	Fax No.
Address: 258 E Bailey Rd, Apt C, Naperville, IL 60565-1439	Date: 10/30/2015	e-Mail mohammed80@icloud.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

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CHICAGO, IL
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 13
Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, IL 60604-2027

Agency Website: www.nlrb.gov
Telephone: (312)353-7570
Fax: (312)886-1341

April 19, 2019

Via email service unless otherwise indicated

Abdul Mohammed
258 East Bailey Road, Apt C
Naperville, IL 60565-1439
aamohammed80@icloud.com

Re: Uber Technologies Inc.
Case 13-CA-163062

Dear Mr. Mohammed:

We have carefully investigated and considered your charge that Uber Technologies Inc. has violated the National Labor Relations Act.

Decision to Dismiss: You have alleged that on about June 8, 2015 the Employer violated Section 8(a)(1) of the Act by telling employees that they would be terminated if they attempted to discuss working conditions with other employees. You also have alleged that on about June 15, 2015 the Employer discharged you in retaliation for engaging in protected concerted activities. However, the evidence shows that you are an independent contractor and, therefore, are not covered under the Act. *SuperShuttle DFW, Inc.*, 367 NLRB No. 75 (2019). Accordingly, I am refusing to issue complaint.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **May 3, 2019**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than May 2, 2019. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before May 3, 2019**. The request may be filed electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after May 3, 2019, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Peter Sung Ohr

Peter Sung Ohr
Regional Director

Enclosure

cc: Travis Kalanick, CEO
Uber Technologies Inc.
1401 West North Avenue
Chicago, IL 60642
(via first class mail)

Adam C. Wit, Attorney. Office Managing
Shareholder
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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Date: 07/01/2019

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in Abdul Mohammed v Uber Technologies Inc

Case Name(s).

13-CA-163062

Case No(s). (If more than one case number, include all case numbers in which appeal is taken.)

A handwritten signature in black ink, appearing to be 'M.A.A.' followed by a horizontal line.

(Signature)

ABDUL MOHAMMED,

COMPLAINANT

v

Case No.13-CA-163062

UBER TECHNOLOGIES INC,

RESPONDENT

COMPLAINANT'S BRIEF IN SUPPORT OF HIS APPEAL

NOW COMES, the Complainant, Abdul Mohammed, appearing on behalf of himself with his Brief in support of his Appeal and in support states as follows:-

ARGUMENT

The Complainant would like to bring to the notice of the Office of Appeals; the decision of the Board dismissing the instant charge was not on the merits and against the manifest weight of evidence. The Board's Advice Memorandum states, "Additionally, in the shared-ride and taxicab industries, the Board gives significant weight to two factors: (1) the extent of the company's control over the manner and means by which drivers conduct business and (2) the relationship between the company's compensation and the amount of fares collected", when ruling whether the drivers in question are employees or independent contractors'. The Complainant would like to address these two factors now.

1. Board's Advice Memorandum states, "The drivers had significant entrepreneurial opportunity by virtue of their near complete control of their cars and work schedules, together with freedom to choose log-in locations and to work for competitors of Uber. On any given day, at any free moment, drivers could decide how best to serve their economic objectives: by fulfilling ride requests through the App, working for a competing ride-share service, or pursuing a different venture altogether. As explained in detail below, these and other facts strongly support independent-contractor status and outweigh all countervailing facts supporting employee status".

RESPONSE: Associate General Counsel's Advice Memorandum is nothing but a political decision and her careful crafting of this Advice Memorandum is nowhere near the truth. The extra effort Associate General Counsel took to make this Advice Memorandum look like as if it is in accordance with the NLRA is itself its undoing and the complainant can see through how she discounted the factors which were heavily in favor of the drivers. With Uber's app design and deployment, the company produces what many reasonable observers would define as a managed

labor force. Drivers have the freedom to log in or log out of work at will, but once they're online, their activities on the platform are heavily monitored. The platform redistributes management functions to semi-automated and algorithmic systems, as well as to consumers. The Algorithmic management, however, can create a deal of ambiguity around what is expected of workers — and who is really in charge. Uber's neutral branding as an intermediary between supply (drivers) and demand (passengers) belies the important employment structures and hierarchies that emerge through its software platform. Uber sets the rates. Uber has full power to unilaterally set and change the fares passengers pay, the rates that drivers are paid, and the commission Uber takes. While Uber's contract with its "partners" outlines (section 4.1) that the fare Uber sets is a "recommended" amount (drivers technically have the right to charge less, but not more, than the pre-arranged fare), there is no way for drivers to actually negotiate the fare within the Uber driver app. Uber sets the performance targets. Uber's three main performance metrics are the driver's rating, how many rides the driver accepts, and how many times they cancel a ride. Generally, Uber requires drivers to maintain a high ride acceptance rate, such as 80% or 90%, and a low cancellation rate, such as 5% in San Francisco (as of July 2015), or they risk deactivation (temporary suspension or permanent firing) from the platform. Uber's system enforces blind acceptance of passengers, as drivers are not shown the passenger's destination or how much they could earn on the fare. While this could deter destination-based discrimination, and Uber markets this as a feature of its system, whenever Uber drivers accept a ride, they effectively take a financial risk that the ride will only cost the "minimum fare," an amount that varies by city. In Savannah, Georgia, for example, the minimum fare is \$5 for Uber X, which drivers perceive as unprofitable, because Uber takes a \$1.60 booking fee (formerly a "safe rides" fee) off the top, plus their commission of at least 20% on the remaining \$3.40. That leaves the driver with \$2.72, not accounting for any of their expenses, such as gas. Customers act as managers. Uber's rating system serves to automate and alert the company to drivers who are under-performing. After every ride, passengers are prompted to rate drivers on a 1-to 5-star scale. This feedback generates instantaneous and recurrent performance evaluations that allow Uber to track worker performance and intervene with poor performers. In order to remain active on the system, drivers must meet an average rating target that hovers around 4.6 out of 5 stars. Though rating systems can build and scale trust and accountability in platforms, they have their flaws. Passengers are generally not educated on Uber's rating system; they may presume that 4 out of 5 stars is a good rating, but such a score is actually a failing grade. Discrimination may also be of concern, as consumers can directly assert their preferences and their biases in ways that companies are prohibited by law from doing. To achieve good ratings, drivers must modify their behavior to produce a fairly homogenous Uber experience. The company encourages uniform behavior in a few ways. Uber's training video, for example, say that 5-star drivers provide phone chargers or bottled water. And the company routinely sends messages to drivers that explain how passengers rate particular behaviors. For example, one includes suggestions such as, "Go above and beyond to make the experience special, such as opening doors for riders when possible," and "Ask if the rider has a preferred route," and "Riders...prefer for drivers not to promote other businesses during the trip." This redistribution of managerial oversight and power away from formalized management and toward a triadic relationship between employers-workers-consumers is part of a broader trend in

the on-demand economy, and in the service industry more generally. “The customer is always right” takes on a new higher stakes meaning. Uber suggests the schedule. You’re probably familiar with Uber’s surge pricing model. It goes into effect when demand (passengers) outstrips supply (drivers) by a particular threshold. Visible to both riders and drivers, the creation of such surge pricing zones is billed as a means to ensure positive customer experience by enticing drivers to get on the road, although there is some evidence that it merely redistributes existing supply into high-demand areas. Drivers are alerted to surging zones through a heat map visualization, which shows where demand and fares will temporarily rise, by a magnitude that could range from 1.5x-9.5x. Drivers are prompted by Uber’s alerts to go online, or to keep driving (even as they click the “log off” button) to get fares that are increased by the surge multiplier for a given region. Some drivers referred to surge as a “herding tool” that ushered them into specific geo-fences. They receive emails and texts that predict high demand (which indicates “surge will happen” to drivers) in advance. Complainant’s research, however, found that the promise of higher wages from surge pricing is often unreliable. First, pricing is based on the passenger’s location. Drivers traveling to surge zones in search of fares advertised at a given rate would still receive ride requests from passengers in adjacent non-surging areas and have to stop to pick them, or risk their cancellation rate go up. Drivers can also converge en masse at a surging area, only to find that supply was no longer too low and the surge premium had disappeared. On forums, various drivers advised others “Don’t chase the surge.” Nevertheless, drivers develop their own estimates of when surge is worthwhile, such as if they’re close by, or they plan to work at times when certain areas of town usually surge, such as closing time at bars or near concert venues. Aside from surge messaging, Uber also nudges offline drivers to work at certain times or in certain locations through various incentives and messaging. The result can be tantamount to shift work, although drivers are encouraged rather than scheduled to work at those times. Most conversations about the future of work and automation focus on issues of worker displacement. We’re only starting to think about the labor implications in the design of platforms that automate management and coordination of workers. Tools like the rating system, performance targets and policies, algorithmic surge pricing, and insistent messaging and behavioral nudges are part of the “choice architecture” of Uber’s system: it can steer drivers to work at particular places and at particular times while maintaining that its system merely reflects demand to drivers. These automated and algorithmic management tools clearly indicate that drivers are employees whose employment opportunities are made possible through an intermediary software platform. In many ways, automation can obscure the role of management, but as Complainant’s research illustrates, algorithmic management cannot be conflated with worker autonomy. Associate General Counsel’s analysis and decision, rather I would call it assumption, that the Uber drivers are free to work for Uber’s competitor’s or work for other ride sharing service. When Uber driver picks up a rider for example going from Chicago Loop to O’Hare Airport that Uber driver can only have the rider assigned to the driver by Uber and that Uber driver cannot stop and pick up any other rider who is also going to O’Hare Airport through an Uber’s competitor (Lyft, Via etc.), or from any other ride sharing service. Just like an employee working for 3 different employers between 8:00 AM to 8:00 PM will not become an Independent Contractor, Uber drivers cannot be considered an Independent Contractor for working for Uber’s competitor (Lyft,

Via etc.), or from any other ride sharing service because drivers cannot have riders other than Uber riders in their vehicles when they are driving an Uber rider to his/her destination and the drivers are prohibited from having riders from Uber's competitor (Lyft, Via etc.), or from any other ride sharing service while Uber drivers have a Uber rider in their vehicle . For this analysis only the time of the ride should be taken into account such as an Uber ride from Chicago Loop to O'Hare Airport which usually takes 45-60 minutes, depending on the traffic and weather. Even for Uber Pool, drivers can only pick up riders assigned by Uber and they cannot pick up riders through an Uber's competitor (Lyft, Via etc.), or from any other ride sharing service. Further Board's analysis that drivers are Independent Contractors because they can pursue an altogether different venture after logging off from the Uber app is preposterous. There are millions of employees who are owning businesses apart from having employment and these millions of employees are not being classified as Independent Contractors because they are having a business apart from his/her employment. Even owners of businesses are working as employees for their own companies and paying themselves salaries, paychecks and issuing IRS Form-W2 at the end of the year and they are not being considered Independent Contractors and owners of businesses who are employees of their own companies as described above are working for their businesses whenever they want and they are not working when they don't want, taking breaks when they want, they have no supervisors, and while being an employee of their own company and while getting paid through an IRS Form-W2, they are also pursuing different ventures including some other employment. In fact the following founders of Uber while owning Uber Technologies Inc., paid themselves a paycheck and issued themselves IRS Form-W2 while working whenever they want and not working when they don't want, took breaks and vacations to Caribbean, to Europe etc. whenever they wanted, they had no supervisors, and while being employed owning Uber Technologies Inc. pursued altogether different ventures:

- a) Travis Kalanick;
- b) Oscar Salazar;
- c) Curtis Chambers;
- d) Austin Geidt;
- e) Ryan Graves;
- f) Garrett Camp;
- g) Jordan Bonnett;
- h) Domenic Narducci;
- i) Scott Munro;
- j) Ryan McKillen;
- k) Conrad Whelan;
- l) Rachel Holt;

Why the above mentioned owners of Uber should not be considered Independent Contractors, in fact, they are getting paychecks and IRS Form-W2 at the end of the year. In 2016, 43% of workers in the United States reported working remotely at least some of the time. The share of people doing at least 80% of their job from their homes rose to 31%, from 24% in 2012. Further according to recently released data from the United States Census, 5.2% of workers in the United States worked full-time from home in 2017—or 8 million people. That share is up from 5% in 2016, and 3.3% in 2000. These 8 million workers who are working full-time from home has no supervisor sitting

in their bedroom, they work whenever they want and they don't work when don't want, they take breaks whenever they want and they are pursuing a totally different venture while getting paid through a paycheck and are being issued IRS Form-W2 at the end of the year and these 8 million workers are not being classified as Independent Contractors and Uber drivers are similarly situated like these 8 million workers who are working full-time from their bedroom. In fact Uber drivers' argument is even stronger to be classified as employees when compared to these 8 million workers who are working full-time from their bedroom, as Uber is exercising fair amount of control over drivers as described above. Further Uber's employees testified in detail and filed declarations under penalty of perjury in Complainant's Charge # 2015E015 with Cook County Commission on Human Rights, regarding how Uber supervises its drivers, controls its drivers and performs quality checks on its drivers, disciplines its drivers and terminates its drivers based on their performance. The entire 673 Page Record from Complainant's Charge # 2015E015 with Cook County Commission on Human Rights (CCHR) is attached as Exhibit-A with this Brief. Brian Maloney testified at CCHR Hearing that he was Driver Operations Manager at Uber's Chicago Office and he described his primary job duties as "So I work on a team that ran and managed processes associated with driver payments, driver quality processes, driver onboarding, driver messaging or communications regarding large events, management of large events in case we had some sort of presence at that event, those sorts of things". Brian Maloney's primary job duties as described above are nothing but supervision of drivers. Further Maloney testified that he reported to Ted Herringshaw who was Senior Operations Manager and Herringshaw sat next to Maloney in Uber's Chicago Office. See Page 96 of the Transcript in [Exhibit-A](#). Further Maloney testified there were other Driver Operations Managers at Chicago Location. See Page 113 of the Transcript in [Exhibit-A](#). Further Maloney testified that Herringshaw and Mike were two Heads of Diver Operations Team. See Page 114 of the Transcript in [Exhibit-A](#). Further Maloney testified that Herringshaw and Mike reported to Chris Taylor, the General Manager at Chicago Location. See Page 115 of the Transcript in [Exhibit-A](#). Further Maloney testified that Ken Miranda performed the quality checks on the Drivers. See Page 115 of the Transcript in [Exhibit-A](#). Further Maloney testified in detail, how Ken Miranda supervised the drivers, performed quality checks on drivers and took actions against drivers based on the result of the quality checks. See Page 115 to 177 of the Transcript in [Exhibit-A](#). Further Miranda and Maloney testified how they supervised drivers, sent emails and text messages to drivers to come out on the road and start driving, wrote codes to perform quality checks on the drivers, performed quality checks on the drivers and took actions against drivers based on the results of the quality checks. See Page 177 to 244 of the Transcript in [Exhibit-A](#). The information in [Exhibit-A](#) is a tell-tale that Uber drivers are employees within the meaning of NLRA. Uber has thousands of off-site supervisors who are working round the clock in shifts and these supervisors are supervising drivers as testified by its own employees, Ken Miranda and Brian Maloney in Transcript of [Exhibit-A](#). Further as described above the 8 million employees who work full time from home in United States, owners of companies who are employees of their own companies, and owners of Uber Technologies Inc. who are also employees of Uber Technologies Inc.; has unfettered freedom to set their work schedules and they choose when to work, how long to work and the days they don't want to work; they controlled their work locations and can

work from their bedrooms or they can work while they are on a beach in Caribbean; and they can work for different employers and pursue all together a different venture but they are not considered Independent Contractors by the Board whereas the Uber drivers are considered Independent Contractors. One more glaring example of Board's discriminatory Employee v Independent Contractor Test applied in the instant case is the charge filed by *James Damore* against Google Inc., in August of 2017. Board held that Damore was an employee within the meaning of NLRA and Board also held all workers of Google Inc. whether they worked in office or they work from home are employees within the meaning of NLRA. Google Inc. has more than 98,771 employees as of today and thousands of these 98,771 workers of Google Inc., work from home and has no supervision by a supervisor, set their work schedules and they choose when to work, how long to work and the days they don't want to work; they controlled their work locations and can work from their bedrooms or they can work while they are on a beach in Caribbean; and they can work for different employers or pursue all together a different venture but Board has ruled all these Google Inc.'s workers as employees whereas Board has ruled Uber drivers who are situated exactly like these Google Inc.'s workers, as Independent Contractors. If NLRA does not have jurisdiction over Uber drivers, it should not have jurisdiction over the 8 million employees who work from home in United States as described above, owners of businesses who are employees of their own companies as described above, all the above mentioned founders of Uber as described above, James Damore and all the other workers of Google Inc., who work from home as described above. In fact the Complainant did not even worked from home for Uber, he went to work in Chicago when he was in fact living in Naperville and many of Uber's drivers drive as far as 50 miles to come to work every day for Uber in Chicago and in fact many of the Uber drivers who were living in Indiana and Wisconsin came to work for Uber in Chicago. There is nothing like broad geographical market for the drivers to work, for someone living in Cairo, Illinois has no work from Uber in Cairo and that driver needs to drive from Cairo to a geographical area where Uber has work and that is nothing but driving to your place of employment. Further Board's statement that, "Uber placed no limits on this freedom such as restrictions on drivers' use of their cars or fees that drivers must pay even if they perform no Uber rides", cannot be any far from truth as Uber had restrictions on the Year, Make and Model of the car the drivers can use and the Complainant was asked to buy a car of newer model and year and the Complainant bought a car which was in compliance with Uber's requirements when he started to work for Uber. Further Uber also leased vehicles to drivers and the drivers had to pay lease of the car which they leased from Uber every week, even in case they did not earn a single dollar in that week. Further Uber Policy White Paper 1.0 ([Exhibit-E](#)), which was created and shared by its founder Travis Kalanick on 11/24/2015 at 10:33 AM, says that Uber is, "Everyone's Private Driver". But now Uber says that they are just a Technology Company. Further Uber Policy White Paper 1.0 says, "Uber will roll out ridesharing on its existing platform in any market where the regulators have given tacit approval". In other words, Uber says we will break laws and commit crimes where the Law Enforcement is not effective or absent. Uber's propensity to break laws and commit crimes is unmatched. Further Uber Policy White Paper 1.0 says, "The criteria for which a driver will be disqualified will be stricter than what any existing local regulatory body already has in place for commercial

transportation providers". When Uber itself says that their criteria to supervise, control, discipline, suspend and terminate a driver is even stricter than any other local regulatory bodies such as City of Chicago Department of Business Affairs and Consumer Protection (BACP), New York City Taxi and Limousine Commission (NYCTLC) etc.; why did Jayme Sophir assumed that Uber does not to supervise, control, discipline, suspend and terminate its drivers when in fact the Board recognized same factors in *Elite Limousine Plus* and ruled drivers of *Elite Limousine Plus* as employees. In the instant case the factors of control, supervision, discipline, suspension and termination of drivers are far heavier than *Elite Limousine Plus* when Uber itself has acknowledged in its Uber Policy White Paper 1.0 that their criteria to supervise, control, discipline, suspend and terminate a driver is even stricter than any other local regulatory body such as City of Chicago Department of Business Affairs and Consumer Protection (BACP), New York City Taxi and Limousine Commission (NYCTLC) etc. Drivers in *Elite Limousine Plus* were also subjected to local and state government regulations but they were still found to be employees by the Board. In *Elite Limousine Plus*, drivers needed to have Limousine Permits issued by local government authorities whereas as UberX drivers don't need any special license issued by local government. In the instant case the extent of government regulations is far less than *Elite Limousine Plus* and the extent of Uber's control of its drivers is not only far greater than *Elite Limousine Plus* but in fact Uber's control on its drivers is absolute. Uber control's its drivers with an iron fist just like dictators such as Saddam Hussain and Muammar Gaddafi controlled the people of Iraq and Libya respectively during their reign. Saddam Hussain and Muammar Gaddafi said to the entire world that their governments are democratic country but the entire world new what is the truth. If Uber and Travis Kalanick say that its drivers are Chimpanzees and not human beings, do we become Chimpanzees? Similarly when Uber says its drivers are Independent Contractors, we don't become Independent Contractors. Board should give no deference whatsoever to Uber's baseless arguments and its credibility, as this company has committed crimes against the drivers and other Ride Sharing Companies to control its drivers as described in this Brief and they continue to commit further crimes but not limited to sexual harassment of its female employees. How Uber Executives have sexually harassed its female employees is a matter of public record. *Elite Limousine Plus* did not committed any crime in order to control its drivers whereas Uber has committed crimes to control its drivers as described in this Brief, but still Board found that drivers of *Elite Limousine Plus* are employees. Further Uber has thousands of On-Site Driver Supervisors and Managers at all the Airports in United States to supervise, control, discipline, suspend and terminate its drivers. See [Exhibit-F](#). Further Uber has thousands of Driver Supervisors and Managers at all the Events across the length and breadth of United States. Some of the job duties of these Driver Supervisors and Managers at the Events are, "Manage on-site personnel and ensure accountability" and "crisis-management-identify filed issues and develop solutions". See [Exhibit-G](#). When Uber says they don't control, supervise and direct the drivers on how to work then Uber has no business in deploying thousands of Driver Supervisors and Managers at Airports and Events and Uber says that these Driver Supervisors and Managers ensure accountability that is nothing but disciplining, suspending and terminating the drivers. *Elite Limousine Plus* did not have any On-Site Supervisors but their drivers were still ruled to be employees whereas Uber has On-Site Supervisors as described above. The duties Driver Supervisors and

Managers at all the Airports include a mix of 1) congestion strategy and planning; 2) onsite support and implementation of traffic/space plans; and 3) airport Pick Up location negotiations support and they are responsible for leading Uber's traffic and congestion strategy at airports and developing scalable optimization solutions; 4) will inform planning and assist with implementation of airport asset requirements, mapping and auditing in collaboration with Uber's Global Security team. Driver Supervisors and Managers at all the Airports are experts in congestion solutions and traffic planning, as well as plan presentation.

Uber's Airport Driver Supervisors and Managers do the following as listed in **Exhibit-F**:

- a) Set Vision: Work closely with airport teams and leadership to develop and refine airport congestion reduction and traffic strategies for current and future airport operations.
- b) Scale: Develop and collaborate with relevant Airport Business Development and Airport Operations teams to build scalable programs, processes, and planning for efficiencies that can be rolled out at airports across the US & Canada.
- c) Work with Uber's Global Security team to build airport traffic/parking plans to optimize rideshare operations and ensure all airport plans meet Uber's safety and security standards and incorporate company best practices.
- d) Develop and customize policies, procedures and training to ensure airport security and traffic staff is complying with Uber security directives and industry best practices.
- e) Assist Airport Business Development and Operations teams on presentation and implementation of plans at airports.
- f) Collaborate with Airport Partner Managers and Product Ops to determine ideal product configurations at airports.

All the job duties of Uber's Driver Supervisors and Managers at Airports and Events points to control, supervision, discipline, suspension and termination of drivers. Majority of Uber's revenue is generated from its rides which started or ended at Airports and Events. Uber's Driver Supervisors' and Managers', managing traffic of Uber drivers at Airports and Events speaks volumes of Uber's control and supervision of its drivers.

I. Joint Employer Test vs Non-Joint Employer Test

Further as Board ruled in *Browning-Ferris* that the principal employer's "actual" control over the employees of the contractor was no longer necessary. Under long established common law principles of agency, joint-employer status could be found by indirect means, such as the existence of a contractual provision between the principal and contractor stating that the principal has control over the work of the contractor, even if such control is not exercised. Uber's control of its drivers is a combination of direct and indirect control and when Board has recognized "indirect control" even if it is not enforced in *Browning-Ferris*; there is no reason for the Board to not recognize "indirect control" in the instant case when Uber is actually exercising minor portion of control of its drivers in an indirect manner and majority of the Uber's control of its drivers is direct in nature as described in this Brief.

II. Uber Violated Federal Anti-Trust Laws in order to control the Drivers.

Further Uber has violated federal antitrust laws as described below in order to control the drivers and all the drivers have claims against Uber under Section 4 of the Clayton Act (15 U.S.C. § 15), for damages caused by Uber's violations of Section 2 of the Sherman Act (15 U.S.C. § 2).

III. Uber created Barriers for Entry of other Ride Sharing Companies in order to control its Drivers.

There are high barriers to entry in the market for Ride Sharing Companies. Ride Sharing Companies connect two sets of consumers, passengers and drivers, and thus are two-sided platforms that exhibit indirect network effects. Indirect network effects exist where the value of the two-sided platform to one group of customers depends on how many members of a different group of customers participate. In the case of Ride Sharing Companies, the value of an App to Passengers depends on how many drivers are using the same App near their location. As more drivers use a particular Ride-Hailing App, the value of that platform increases for passengers because it becomes more likely that they will be matched quickly with a nearby driver when trying to book a ride. And as more drivers join the platform, wait times decrease, making the Ride-Hailing App more valuable to passengers. The same principle applies to drivers. The value of a Ride-Hailing App to drivers depends on how many nearby passengers are using the App. As more passengers use a particular Ride-Hailing App, the value of that platform increases for drivers because it becomes more likely that they will be matched quickly with a nearby passenger looking for a ride. In other words, as more passengers use a Ride-Hailing App, it becomes more valuable for drivers because the amount of time drivers spend waiting for ride requests declines and so does the distance to the pick-up point for their next ride. Uber and its senior executives and officers recognized that these network effects were vital to its business and its strategy for marginalizing its competitors. In 2014, its former CEO and founder, Travis Kalanick, described "the network effects of [Uber's] business" this way: "

"More cars and drivers mean better coverage and lower pickup times. Lower pickup times mean better economics for drivers, and thus more drivers and cars".

Bill Gurley, a general partner at Benchmark Capital (an early Uber investor), wrote a blog post in 2014, when he was a member of Uber's board of directors, that discussed the importance of network effects to Uber's business:

"Eighteen years ago, Brian Arthur published a seminal economic paper in the Harvard Business Review titled, "Increasing Returns and the Two Worlds of Business." If you have not read it, I highly recommend that you do. His key point is that certain technology businesses, rather than being exposed to diminishing marginal returns like historical industrial businesses, are actually subject to a phenomenon called known as "increasing returns." Gaining market share puts them in a better position to gain more market share. Increasing returns are particularly powerful when a network effect is present. According to Wikipedia, a network effect is present when "... the value of a product or service is dependent on the number of others using it." In other words, the more people that use the product or service, the more valuable it is to each and every user. So the

IV. The Three Drivers of a Network Effect in the Uber Model.

(1) **Pick-up times.** As Uber expands in a market, and as demand and supply both grow, pickup times fall. Residents of San Francisco have seen this play out over many years. Shorter pickup times mean more reliability and more potential use cases. The more people that use Uber, the shorter the pick-up times in each region.

(2) **Coverage Density.** As Uber grows in a city, the outer geographic range of supplier liquidity increases and it keeps increasing further. Once again, Uber started in San Francisco proper. Today there is coverage from South San Jose all the way up to Napa. The more people that use Uber, the greater the coverage.

(3) **Utilization.** As Uber grows in any given city, utilization increases. Basically, the time that a driver has a paying ride per hour is constantly rising. This is simply a math problem – more demand and more supply make the economical traveling-salesman type problem easier to solve. Uber then uses the increased utilization to lower rates – which results in lower prices which once again leads to more use cases. The more people that use Uber, the lower the overall price will be for the consumer.

These network effects create a formidable barrier to entry that insulates incumbent Ride Sharing Companies from new competition or expansion by smaller rivals. A new competitor trying to enter the market or an existing, smaller firm trying to expand will not be able to compete in a timely, likely, or sufficient basis with incumbent firms that already have established large networks of drivers and passengers using their Ride-Hailing Apps. For example, without enough drivers, a smaller rival will not be able to compete with the shorter wait times available on incumbent apps, and without enough passengers, the upstart firm will not be able to attract drivers to its platform. And that is the case even if the new competitor offers better commercial terms or features. The value of Ride-Hailing Apps is derived from the number of drivers and passengers, giving incumbent firms, especially a monopolist like Uber, an inherent and insurmountable advantage. This chicken-or-egg problem has stifled new entrants and prevented competitors from imposing a true competitive constraint on Uber. Even in response to the wave of anticompetitive price increases Uber has imposed over the past two years, new rivals have not emerged to challenge Uber’s market dominance. Economies of scale also are a major barrier to entry in the market for Ride Hailing Apps. Uber’s scale advantages are difficult, if not impossible, for a new entrant or smaller firm to overcome because of the dominant market position Uber has obtained through its anticompetitive actions. Uber now boasts a user base of over 40 million passengers in cities around the United States. When those passengers travel to a new city, they can open their Uber App and know that they will be able to book a ride within a few minutes. Likewise, drivers know that if they relocate to another city, they will be able to turn on their Uber App and be matched with passengers within a matter of minutes. These scale advantages have enabled Uber to expand more rapidly and effectively than its competitors into new markets. Bill Gurley described Uber’s scale advantages this way:

“Uber also enjoys economies of scale that span across city borders. Many people who travel have experienced Uber for the first time in another city. When the company enters a new city they have the stored data for users who have opened the application in that area to see if coverage is available. These “opens” represent eager unfulfilled customers. They also have a list of residents who have already used the application in another city and have a registered credit card on file. This makes launching and marketing in each additional city increasingly easier”.

Another barrier to entry created by Uber’s scale relates to the volume of data that it collects from transactions completed on its platform. (*e.g.*, most popular destinations, busiest times of day for ride requests, impacts of seasonality, traffic patterns, etc.). Uber can use this data to improve its algorithms for matching drivers and passengers, allowing its App to more rapidly and effectively improve its matching and scheduling functions than is possible for an upstart competitor. A new entrant or fringe competitor in the market for Ride-Hailing Apps cannot leverage an existing customer base in the same way to effectively compete with Uber’s scale. Uber did not have to overcome barriers to entry in the market for Ride-Hailing Apps that are created by network effects and economies of scale. When Uber embarked on its anticompetitive crusade to obtain its monopoly position, there were no incumbent Ride Sharing Companies with an established network of drivers and passengers. New firms competing with Uber today face substantial long-run costs that Uber did not need to incur to surmount the barriers to entry created by network effects and economies of scale. Other Ride Sharing Companies also recognize that network effects and scale are formidable barriers to entry that insulate incumbent providers from new competition. For example, one of Lyft’s co-founders, John Zimmer, has publicly acknowledged “very strong network effects” in the market for Ride-Hailing Apps.

V. Market Participants & Market Shares.

Due to the importance of network effects, the market today has effectively collapsed into a duopoly composed of Uber and its only real remaining competitor, Lyft. Uber and Lyft collectively account for nearly 100% of all rides booked through Ride-Hailing Apps in the United States. On a national level, Uber’s market share in the United States is approximately 70%. Lyft’s market share in the United States is approximately 30%. In local markets, Uber has monopoly power in each city where it competed with other Ride Sharing Companies:

- a) San Francisco, at all times between 2014 and the present, Uber’s market share has been at least 60%.
- b) In Los Angeles, at all times between 2014 and the present, Uber’s market share has been at least 60%.
- c) In Chicago, at all times between 2014 and the present, Uber’s market share has been at least 65%.
- d) In Philadelphia, at all times between 2014 and the present, Uber’s market share has been at least 70%.
- e) In Washington, DC, at all times between 2014 and the present, Uber’s market share has been at least 70%.
- f) In New York, at all times between 2014 and the present, Uber’s market share has been at least 75%.
- g) In Seattle, at all times between 2014 and the present, Uber’s market share has been at least 65%.
- h) In San Diego, at all times between 2014 and the present, Uber’s market share has been at least 65%.

- i) In San Jose, at all times between 2014 and the present, Uber's market share has been at least 65%.
- j) In Boston, at all times between 2014 and the present, Uber's market share has been at least 70%.

VI. Uber's Anticompetitive Tactics, in order to control the Drivers.

Uber did not acquire and maintain its monopoly by offering a better product or competing on the merits. Instead, Uber's senior executives and officers directed a series of anticompetitive tactics that were specifically designed to thwart true competition and allow Uber to institute anticompetitive pricing strategies in the long-run. Through the anticompetitive actions described below, among others, Uber marginalized its competitors, raised barriers to entry, and insulated itself from meaningful competition.

VII. To control the Drivers, Uber engaged in predatory pricing and increased prices after other Ride Sharing Companies but not limited to Sidecar, exited the Market.

With the introduction of UberX, Uber deployed a two-part predatory pricing strategy to build its network and push out the competition, including Sidecar. First, Uber offered sign-up bonuses and other subsidies to drivers, allowing them to earn more on each ride than they would if Uber employed a profit-maximizing strategy. Second, it offered heavily subsidized rates to encourage passengers to use its App, allowing them to pay less on each ride than they would if Uber employed a profit-maximizing strategy. In combination; these tactics caused Uber to incur substantial short-run losses. On information and belief, Uber planned to incur near-term losses on transactions conducted through its App until it obtained a dominant market position, at which point it could start raising prices to supra-competitive levels to recoup its losses. The variable costs associated with each transaction conducted through a Ride-Hailing App include at least the following categories of costs: (1) the payment made by the Ride Sharing Companies to the driver; (2) the subsidy or discount provided to the passenger; (3) the marketing costs associated with attracting the driver and passenger to the App to complete the transaction; (4) customer service costs; (5) payment processing fees; and (6) the cost of the computer servers necessary to run the software and process the transaction. Between 2013 and 2016, in the markets where Uber was competing with Sidecar, the average prices Uber charged Passengers were lower than Uber's average variable cost per transaction. Uber's prices were so low that the commission it received from each transaction, on average, was lower than its average variable cost for the transaction (accounting for at least Driver payments and subsidies, Passenger subsidies and discounts, marketing costs, customer service costs, payment processing fees, and server costs). In other words, on average, Uber lost money on each transaction completed through its Ride-Hailing App. On information and belief, in July 2014; for example, Uber subsidized 20% of the prices charged to Passengers for UberX rides. And by 2015, passenger fees were only covering around 40% of Uber's costs for each transaction conducted through its App. Based on press reports; Uber has privately advised current and potential investors that driver subsidies are responsible for the large losses it has historically recorded on its books. Public reports estimate that these losses exceeded \$9.9 billion between 2012 and 2017. Until Sidecar went out of business in December 2015, however, it was unclear whether Uber's predatory strategy would be successful and allows Uber to recoup its predatory losses by raising prices in the long-run. Those doubts have now been erased. Uber has in fact raised prices several times since Sidecar ceased

operations. Because Sidecar is no longer in the market exercising a competitive constraint on Uber, Uber has been able to steadily raise its prices in each market where it previously competed against Sidecar. Since January 2016, Uber has raised prices to supra-competitive levels. For example, Uber has imposed at least the following specific price increases in the markets where it previously competed against Sidecar since Sidecar exited the market in December 2015 as described in **Exhibit-B**. Please review **Exhibit-B** before reading further. Over the same time that Uber has been steadily increasing the prices paid by passengers, it has been reducing the payments it makes to drivers. Indeed, in May 2015, Uber implemented a tiered pricing schedule for UberX drivers in San Francisco and San Diego, increasing the base “commission” it charged drivers to 30% (up from the 20% levels that prevailed in 2014). Also in 2015, Uber raised the base commission it charged drivers in New York City and Boston from 20% to 25%. Moreover, booking and other fees have increased Uber’s effective commission rate (the percentage of passenger payments retained by Uber) to more than the advertised base commission charged to drivers. On information and belief, in San Francisco in 2016, for example, median effective commissions were as high as 39%. And in Austin beginning in early 2018, effective commissions rose to over 30%.

VIII. To control the Drivers, Uber intentionally and tortuously interfered with Sidecar’s App and other Ride Sharing Companies’ Apps and its Relationships with passengers and drivers.

By mid-2014, Uber operated in all of the cities where Sidecar and other Ride Sharing Companies operated (San Francisco, Austin, Los Angeles, Chicago, Philadelphia, Washington DC, New York, Seattle, San Diego, San Jose, and Boston). On information and belief, from that point in time, continuing through the time that Sidecar wound down its operations, Uber carried out a covert campaign to undermine the performance of its competitors’ Ride-Hailing Apps, including Sidecar’s App. Uber’s senior executives and officers devised secret programs to submit fraudulent ride requests on competitors’ Apps. These fraudulent requests were submitted with two goals in mind: (a) to undermine the value of competitive Ride-Hailing Apps, for both passengers and drivers; and (b) to recruit drivers to work exclusively with Uber (instead of its competitors). The fraudulent requests undermined the value of competitive Apps for drivers because drivers were matched with fraudulent ride requests instead of real passengers. Instead of earning money by completing rides, drivers were sent on a wild goose chase or to pick up Uber contractors that were not true passengers. The passenger experience also was negatively impacted by this fraudulent activity. Because drivers were busy chasing fraudulent ride requests, passengers were met with longer wait times for rides. The reduction in available drivers on competitive Apps, and the corresponding longer wait times, greatly diminished the value of the competitive Apps for passengers. Because of the presence of network effects, these fraudulent ride requests triggered a vicious downward cycle: Drivers who were disappointed with the number of rides they were able to complete through competitors’ Apps switched to Uber. With fewer drivers on the platform, passengers faced longer wait times, and likewise turned to Uber. And with fewer passengers available on a competitive App, it became even less attractive to drivers, which caused even more drivers to leave the App and perpetuated a downward spiral. Uber or persons acting under Uber’s direction submitted such fraudulent ride requests on Sidecar’s Ride-Hailing App and other Ride Sharing Apps. Those fraudulent ride requests expressly

violated Sidecar's and other Ride Sharing companies' terms of service. Between 2012 and 2015, to download and use Sidecar's Ride-Hailing App or any other Ride Sharing App, passengers had to agree to Sidecar's and other Ride Sharing Companies' standard terms of service, which prohibited anyone using the App from:

- A. attempting to interfere with the performance of Sidecar's App or App of any other Ride Sharing Company, including through automated ride requests;
- B. placing a disproportionate load on the infrastructure supporting the App;
- C. using the App for commercial purposes; or
- D. submitting fraudulent requests through the App.

Uber's fraudulently submitted ride requests violated Sidecar's and other Ride Sharing companies' terms of service because, among other things, they interfered with the performance of the App, conducted fraud through the App, or used the App for commercial purposes. These fraudulent and tortious activities allowed Uber to acquire and maintain a monopoly position without having to compete with other Ride-Hailing Apps, including Sidecar's App, on the merits.

IX. Uber caused Anti-Trust Injury to the drivers in order to keep them in its control.

Sidecar went out of business in December 2015 and sold its operating assets to GM. At that time, Sidecar wound down its operations and shut down its Ride-Hailing App. Markets where Sidecar had previously competed against Uber usually had three Ride-Hailing Apps (those licensed and operated by Uber, Lyft, and Sidecar). With Sidecar's failure, passengers and drivers in those markets were left with only two real alternatives (Uber and Lyft). Sidecar's failure therefore significantly reduced competition in each of those markets, harming the competitive process and the users of Ride-Hailing Apps (both drivers and passengers). Uber's anticompetitive and exclusionary acts also prevented Sidecar from expanding into additional geographic markets and competing with Uber in other cities. But for Uber's anticompetitive conduct and abuse of its monopoly position, Sidecar would have remained a viable competitor and served as a check on Uber's anticompetitive price increases. Competition has been harmed in the market for Ride-Hailing Apps as a result of Sidecar's failure. Passengers and Drivers have both been harmed because passenger are now paying higher prices, drivers are being paid less, and both have fewer choices available (Passengers and Drivers are left with only two real alternatives instead of three). Drivers and Sidecar also has suffered significant financial damages flowing from that harm to competition, including (at least) lost profits and/or the artificial suppression of the value of Sidecar's business. Uber has violated (15 U.S.C. § 2) due to its conduct described above and Uber's violation of 15 U.S.C. § 2 was specifically to keep the drivers in their control by destroying other Ride Sharing Companies, so that the drivers are not left with option other than driving for Uber which resulted in drivers working exclusively for Uber. Further Uber also hired drivers with an agreement to exclusively work for Uber. Uber possesses monopoly power in the relevant markets for Ride-Hailing Apps in San Francisco, Austin, Los Angeles, Chicago, Philadelphia, Washington DC, New York, Seattle, San Diego, San Jose, and Boston. Uber has the power to raise prices and exclude competition in each of those relevant markets. Uber's Market share in the relevant markets is as follows:

- a) In San Francisco, Uber's share of the relevant market is at least 60%.
- b) In Los Angeles, Uber's share of the relevant market is at least 60%.
- c) In Chicago, Uber's share of the relevant market is at least 65%.
- d) In Philadelphia, Uber's share of the relevant market is at least 70%.
- e) In Washington, DC, Uber's share of the relevant market is at least 70%.
- f) In New York, Uber's share of the relevant market is at least 75%.
- g) In Seattle, Uber's share of the relevant market is at least 65%.
- h) In San Diego, Uber's share of the relevant market is at least 65%.
- i) In San Jose, Uber's share of the relevant market is at least 65%.
- j) In Boston, Uber's share of the relevant market is at least 70%.
- k) In Austin, Uber's share of the relevant market is at least 70%.

Uber has willfully acquired and maintained monopoly power in the relevant markets for Ride-Hailing Apps in San Francisco, Austin, Los Angeles, Chicago, Philadelphia, Washington DC, New York, Seattle, San Diego, San Jose, and Boston through predatory pricing and other exclusionary, and anticompetitive conduct, as alleged herein.

Predatory Pricing: Uber has excluded competition from the relevant market through a predatory pricing scheme. Between 2013 and 2016, on average, the prices for transactions conducted through Uber's Ride-Hailing App were below the average variable costs for those transactions. On average, Uber lost money on each transaction completed through its App. Sidecar and many other Ride Sharing Companies were forced out of business by Uber's predatory pricing strategy. After Sidecar exited the market, Uber imposed price increases on passengers and reduced the amount that it paid to drivers. Through these price increases, Uber is likely to recoup the losses it sustained as a result of its predatory pricing strategy.

Exclusionary Acts: Uber has reinforced its dominant market position through tortious conduct designed to undermine the functionality of Sidecar's Ride-Hailing App and other Ride Sharing Apps. Uber's tortious conduct included a systematic, pervasive, and sustained effort to submit fraudulent ride requests on Sidecar's Ride-Hailing App and other Ride Sharing Apps. These fraudulent ride requests were not a means of legitimate competition, but rather, were intended to and did undermine Sidecar's and other Ride Sharing App's ability to effectively compete with Uber on the merits. As a result of the fraudulent ride requests, Sidecar's Ride-Hailing App and other Ride Sharing App's became less attractive to drivers and passengers, and they moved off of Sidecar's and other Ride Sharing App's platform. Uber's deceit enabled it to achieve and maintain monopoly power by undermining the functionality and value provided by Sidecar's and other Ride Sharing App's and steering drivers and passengers away from Sidecar's and other Ride Sharing App's and to Uber's App. Uber's conduct alleged above has had an anticompetitive effect in the relevant markets for Ride-Hailing Apps in San Francisco, Austin, Los Angeles, Chicago, Philadelphia, Washington DC, New York, Seattle, San Diego, San Jose, and Boston. Uber's conduct as alleged above has no legitimate business purpose or procompetitive effect. Uber's conduct as alleged above has had

a substantial effect on interstate commerce. Sidecar, many other Ride Sharing companies and the drivers were injured in their business or property or employment as a result of Uber's conduct when Sidecar went out of business in December 2015 and many other Ride Sharing Companies went down at various times. Sidecar, many other Ride Sharing companies and drivers has suffered and will suffer injury of the type that the antitrust laws were intended to prevent. Sidecar, many other Ride Sharing companies and the drivers has been injured by the harm to competition as a result of Uber's conduct. Uber violated Clayton and Sherman Act as described above with a sole aim of controlling the drivers. Uber spent billions of dollars in order to destroy other Ride Sharing Companies, so that the drivers have no other option than driving for Uber. Associate General Counsel should stand in front of a mirror and introspect, what I was and what I have become, a stooge of Uber at United States' dime, while being an employee of United States, who stepped on the feet of hardworking, poor, suppressed, oppressed drivers and stabbed the drivers in the back. Further Uber has employed thousands of Driver Supervisor's to supervise and control the Drivers. Please see [Exhibit-C](#). Further Complainant has not signed any agreement with the Respondent and that matter is still pending in United States District Court for Northern District of Illinois, Eastern Division and the Board or the Respondent cannot enforce the so called agreement upon the Complainant. The Complainant only had an oral agreement with the Respondent that he will be an employee of the Respondent. In the instant case instant case, Uber exercised a 1000% more control than the *Elite Limousine Plus* and drivers of *Elite Limousine Plus* were found to be employees by the Board. Uber committed crimes against drivers including this complainant, in order to keep the drivers in control.

X. Uber's spying of its Drivers and Lyft Drivers to bring Drivers to Uber's Platform and effectively under their control.

Further Uber spied on its drivers and Lyft drivers by intercepting, accessing, monitoring and/or transmitting electronic communications and whereabouts of its drivers and Lyft drivers to lure Lyft drivers and drivers who worked both for Uber and Lyft, to exclusively drive for Uber, all in violation of Federal Wiretap Act as amended by the Electronic Communications Privacy Act (the "ECPA"), the California Invasion of Privacy Act ("CIPA"), the Federal Stored Communication Act (the "SCA"), the California Unfair Competition Law (the "UCL"), the California Computer Fraud and Abuse Act (the "CFAA"), and common law invasion of privacy. See the Lawsuit against Uber in United States District Court Northern District of California, San Francisco Division, Case No.: 3:17-CV-02264, as [Exhibit-H](#). Uber's violations as described in [Exhibit-H](#) were committed in order to destroy its only remaining competitor, Lyft and to take away only remaining option other than Uber, for the drivers. When Uber spied its drivers including this complainant, that is not only a crime but such a crime was committed to control the drivers.

XI. Waymo LLC v. Uber Technologies, Inc. (3:17-CV-00939)

Further during the pendency of *Waymo Case*, Richard Jacobs, and Uber's former Manager of Global Intelligence informed his lawyer how Uber stole trade secrets from Waymo, spied on drivers and other individuals and other companies and committed various crimes with an intent to cause harm to other individuals, companies and to bring

drivers of other Ride Sharing Companies to come and drive for Uber. Please see letter from Jacob's lawyer to Uber as [Exhibit-I](#) for a detailed analysis of Uber's criminal activities in order to destroy other Ride Sharing Companies and to bring all the drivers in their control. Uber settled with Jacobs for \$4.5 Million + a Job at Uber and Uber also paid \$3 Million to Jacob's lawyer. Uber also settled with Waymo for \$245 Million. Uber's lawyer, Angela Padilla, said in court, the allegations in the letter had seemed "quite fantastical" to her. Jacobs testified in *Waymo* case, there was intelligence operation inside Uber to research competitors and gather data about them, and use technology to avoid a paper trail. In court, Padilla said Uber viewed the Jacob's letter as a tactic by a disgruntled former employee to secure money from the company. Padilla said, "We felt that Jacobs was trying to extort the company." Uber eventually settled the matter by paying Jacobs \$4.5 million, including a year-long consulting contract, and a further \$3 million to his lawyer. Judge Alsup said to Padilla, "That is a lot of money". "And people don't pay that kind of money for BS. And you certainly don't hire them as consultants if you think everything they've got to contribute is BS." As per [Exhibit-I](#), Uber fraudulently impersonates riders and drivers on competitors' platforms, hacks into competitors' networks, and conducts unlawful wiretapping (each tactic discussed in additional detail in [Exhibit-I](#)). These tactics are used to obtain trade secrets about:

- a) the function of competitors' Apps;
- b) vulnerabilities in the competitors' App, including performance and function;
- c) vulnerabilities in competitors' App security;
- d) supply data, including unique driver information;
- e) pricing structures and incentives.

As per [Exhibit-I](#), Uber worked to unlawfully obtain trade secrets from its competitors and 1) remotely accessed confidential corporate communications and data of its competitors, 2) impersonated riders and drivers on competitors' platform to derive key functions of rider and driver apps, 3) stole supply data by identifying possible drivers to boost Uber's market position, and 4) acquired codebase which allowed Uber to identify code used by its competitors' to understand in greater detail how their app functioned. By credibly impersonating both riders and drivers, the Uber could request thousands of rides in a given geographic area to study the responsiveness and capability of app, price quotes, and disposition of available drivers. Uber further impersonated prospective customers to ascertain the identity of drivers through their names, license plate numbers, and make/model of their vehicles. Uber then used this information to recruit drivers from their competitors' to Uber's platform. Uber also obtained key technical details about how its competitors would troubleshoot issues in comparison to Uber, and then used that data to develop contingencies to slow or impede competitors' business operations and also caused injury to the drivers in order to bring them to Uber's platform and effectively under their control. Uber employed tactics to obtain trade secrets, with a focus on stealing key supply data to boost Uber's pool of drivers, the function of the competitors' app and its vulnerabilities, and then used that data to develop an aggressive "counter intelligence" campaign to slow competitors' efforts. Uber used special SIM cards to collect intelligence on competitors' trade secrets and to obtain private and protected information about the drivers. Specifically, the SIM cards were used to

fraudulently impersonate customers on competitors' rider and driver applications. By credibly impersonating riders and drivers, the Uber could: (i) develop processes to conduct thousands of data calls to reverse engineer products; (ii) identify and recruit supply (i.e. partner drivers); (iii) and derive key competitive business metrics to understand subsidies, available supply, processes for managing surge, and competitive market position. For instance, Uber would be able to study key technical details of how competitors' had engineered solutions to common problems ride-sharing providers have at scale, and in the context of dense population centers. Uber would then use that data to identify possible improvements, gain competitive advantages, or exploit weaknesses of competitors' platform. Notably, Uber identified vulnerability in their competitors' system and collected comprehensive supply data, including the license, name, and contact information for every single driver around October/November 2016. Further Uber Executives conspired and acted in furtherance of the conspiracy to hack the database of its competitors' and collected all driver information, in order to have a perfect set of possible drivers for Uber's platform which boosted supply when Uber targeted these operators and converted them to drivers for Uber. As discussed above, Uber used driver and customer impersonation to steal competitor trade secrets. This conduct not only violated the trade secrets law discussed above but also wire fraud law at 18 U.S.C § 1343, and California Penal Code § 528.5. Under this Section, it is unlawful to knowingly and without consent, credibly impersonate another actual person through the Internet or email, in order to harm, intimidate, threaten, or defraud someone. This conduct further exposes a company to civil liability under Section 528.5(e). This impersonation was intended to fraudulently steal business and bring drivers under its control and it was "unlawful, unfair, or fraudulent business act and practice. California Bus & Prof Code § 1720. It is also in violation of the CFAA and related laws, discussed in **Exhibit-I**. Along with the theft of trade secrets, Jacobs observed Uber personnel, through their LAT operatives and their vendors, knowingly impersonate actual people over the Internet in order to keep tabs on competitors and opposition groups by accessing closed social media groups. This impersonation had the purpose of fraudulently stealing business and gaining a competitive advantage. During the summer of 2016, Jacobs learned that Uber's intelligence gathering teams in other locations impersonated partner-drivers or taxi operators to gain access to private WhatsApp group messaging channels. Jacobs further investigated this conduct by searching Uber's internal network, TeamDot. Further Uber created a PowerPoint presentation which included a section on " intel gathering," a slide on driver chat group infiltration, and a link to the specific procedures for infiltrating driver-partner chat groups (including the impersonation of actual driver-partners) to collect information on growing discontent and possible opposition activities. Upon receipt, Jacobs disclosed the playbook to Clark, who replied, "Do I want to know what it is?" Jacobs voiced concern as to its legality, noting that it encouraged "intel gathering" and described how to penetrate WhatsApp groups. Clark only replied that "this is happening everywhere and I'm not ready to deal with it." Clark did not investigate the presumed criminal violation. In late January and early February 2017, as part of SSG's virtual operations capability (VOC), Uber's agents posed as sympathetic protestors interested in participating in actions against Uber. By doing this, illegally gained access to closed Facebook groups and chatted with protesting drivers in an attempt to understand their nonpublic plans and intentions. All the actions described in

whatsoever. An unredacted version of Exhibit-I can reveal further about Uber's activities.

XII. Sarbanes-Oxley Violations, Evidence Spoliation, and Other Discovery Abuses by Uber.

The Sarbanes-Oxley Act of 2002 states that:

“whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both”.

Sarbanes-Oxley Act of 2002, Pub. L. 107-204, § 802, 116 Stat. 745, 800 (2002). Codified at 18 U.S.C. § 1519, this provision applies to private companies and has a broad reach that is not limited to commenced litigation. Section 1519 "covers conduct intended to impede any federal investigation or proceeding *including one not even on the verge of commencement.*" *Yates v. United States*, - U.S. --, 135 S.Ct. 1074, 1087 (2015) (emphasis added). Similarly, California Rule of Professional Conduct 5-2320 prohibits members of the bar from suppressing evidence that the member or the member's client has a legal obligation to produce. Uber has knowingly violated 18 U.S.C § 1519 and continues to do so. Craig Clark, Uber's Legal Director for ThreatOps, and Mat Henley, Uber's Director of Threat Operations (ThreatOps), led Uber's efforts to evade current and future discovery requests, court orders, and government investigations in violation of state and federal law as well as ethical rules governing the legal profession. Clark devised training and provided advice intended to impede, obstruct, or influence the investigation of several ongoing lawsuits against Uber and in relation to or contemplation of further matters within the jurisdiction of the United States. Early in his tenure, Jacobs advocated for a secure and encrypted centralized database to ensure confidentiality and recordkeeping to provide access to intelligence for ThreatOps personnel. He presented a draft proposal to managers Henley and Clark. However, discussions broke down immediately because they objected to preserving any intelligence that would make preservation and legal discovery a simple process for future litigants. Clark emphasized that this was "exactly what we don't want to do ... create [a paper trail] that could later be discoverable." Clark noted the errors of past collections where Uber was forced to turn over documents. He alluded to the lessons learned from the "Ergo Investigation" and noted that encryption alone was not enough to avoid discovery. Gicinto added his own objections, stating that while his team would be willing to share some details on collections, including sources and methods of collections on the ground in foreign countries, they were not willing to preserve the raw intelligence on Uber's network. Jacobs then became aware that Uber, primarily through Clark and Henley, had implemented a sophisticated strategy to destroy, conceal, cover up, and falsify records or documents with the intent to impede or obstruct government investigations as well as discovery obligations in pending and future litigation. Besides violating 18 U.S.C. § 1519, this conduct constitutes an ethical violation.

XIII. Destruction and Concealment of Records Using Ephemeral Communications.

Clark and Henley helped implement and directed the almost-exclusive use of ephemeral and encrypted communications software, including WickrMe (and later Wickr SCIF), to communicate sensitive information within ThreatOps. Wickr Inc. is a San Francisco-based company that describes its product as a "communications platform designed to empower greater control over data security ... [using] multi layers of peer-to-peer encryption". Henley and Clark implemented this program of ephemeral and encrypted communications for the express purpose of destroying evidence of illegal or unethical practices to avoid discovery in actual or potential litigation. The Wickr application uses robust encryption which prevents the information from being viewed by anyone except the intended recipient, but more importantly, programs messages to self-destruct in a matter of seconds to no longer than six days. Consequently, Uber employees cannot be compelled to produce records of their chat conversations because no record is retained. Such a policy is inherently violative of the Sarbanes-Oxley Act, 18 U.S.C. Section 1519, and similar laws. Further, Clark and Henley directly instructed Jacobs to conceal documents in violation of Sarbanes-Oxley, by attempting to "shroud" them with, attorney-client privilege or work product protections. Clark taught the ThreatOps team that if they marked communications as "draft," asked for a legal opinion at the beginning of an email, and simply wrote "attorney-client privilege" on documents, they would be immune from discovery. What Clark failed to teach the team, however, is that there is no attorney-client privilege, no "seal of secrecy," if the communications were made for the purpose of enabling the commission of a crime or fraud. *U.S.v. Zolin* 491 U.S. 554, 563(1989); *see also* Cal. Evid. Code § 956. For example, Clark enabled illegal activities and gave legal advice designed to impede investigations by directing the hacking of the competitors' systems and platforms, and by directing the destruction of evidence related to eavesdropping against opposition groups of drivers as discussed above. Given the ongoing criminal and fraudulent activities within Uber, the crime-fraud exception to privilege applies, and all of Clark's communications in furtherance of these schemes would be fair game in discovery. His attempt to pre-emptively conceal them under attorney-client privilege is illegal, unethical, and improper.

XIV. Concealment and Destruction of Records Using Non-attributable Hardware.

Clark, Gicinto, and Henley acquired "non-attributable" hardware and software with which SSG and select members of ThreatOps planned and executed intelligence collection operations. Specifically, Henley and members of the MA team use computers not directly purchased by Uber that operate only on MiFi devices-so that the internet traffic would not appear to originate from an Uber network- virtual public networks (V PNs), and a distributed and non-attributable architecture of contracted Amazon Web Services (AWS) server space to conduct competitive-intelligence collections against other ride-sharing companies. Likewise, Gicinto and the SSG team had similar non-attributable devices purchased through vendors and sub-vendors where they conducted virtual operations impersonating protesting drivers, Uber partner-drivers, and taxi operators. SSG used the devices to store raw information collected by their operatives from politicians, regulators, law enforcement, taxi organizations, and labor unions. By storing this data on non-attributable devices, Uber believed it would avoid detection and never be subject to legal discovery. This is because a standard preservation of evidence order typically focused on Uber work

laptops, Uber networks, and Uber mobile devices. Non-attributable devices were deemed as not reasonably subsumed by any such preservation order and the team could, and did, "legally" (not so) dispose of any evidence or documentation held on these devices in the intervening period before knowledge of the devices' existence could be uncovered. Likewise, members of the ThreatOps team, notably Matt Henley, were known to use personal computers to conduct substantial Uber-related work for the purpose of evading discovery.

XV. Concealment, Cover-up, and Falsification of Records through the Abuse of Attorney-Client

Privilege Designations

Clark developed training on how to use attorney-client privilege to further conceal activities described in any non-ephemeral communication channel. Specifically, he developed a training using innocuous legal examples and the "lawyer dog" meme to produce a slide deck that taught the ThreatOps team how to utilize attorney-client privilege to impede discovery. While the presentation slides themselves did not depict or explain any unethical or illegal practices involving attorney-client privilege, Jacobs observed Clark's presentation first-hand. During the presentation, Clark verbally coached the participants on how to use attorney-client privilege to ensure sensitive intelligence collection activities would not surface in litigation. Clark also answered specific questions from employees on the minimum standards required to claim privilege for the purpose of shielding information. This "legal training" was particularly noteworthy because it surprisingly bears no Uber-branding; it does not even mention Uber, which is startling in a company with strong branding and adherence to process. Clark said that Uber needed to "shroud these work products in attorney-client privilege." Accordingly, Clark instructed Jacobs himself and others to address all emails on sensitive intelligence collection to him and ensure the emails were marked as "ATTORNEY –CLIENT PRIVILEGED AND CONFIDENTIAL," to mark any work product as "DRAFT" regardless of its actual status, and, on every communication, to specifically ask a question or request legal advice on some issue—even if no legal advice was needed or warranted. Likewise, he advised that Jacobs and others that they should communicate almost exclusively via phone, video teleconference ("Zoom"), or via the Wickr app, in that order of preference based on the record and audit trail each communications medium creates. Clark explained that the intent was to prevent disclosure of such communications if Jacobs was ever put on legal hold or his communications were ever subject to a preservation of evidence order. In sum, Uber has directly violated the document destruction, concealment, cover-up, and falsifications provisions of Sarbanes-Oxley in an effort to obstruct or impede active and future government investigations through the (1) acquisition and use of ephemeral communications programs; (2) the acquisition and use of non-attributable hardware and software; and (3) the wholesale abuse of attorney-client privilege designations and all of Uber's violations as described in this Brief were committed with a sole aim of destroying its competitors', so that the drivers have no other option than driving for Uber and to control the drivers.

XVI. Penalties for Violating Antitrust Laws.

Penalties for violating antitrust laws include criminal and civil penalties:

- a) **Violations of the Sherman Act:** Individuals can be fined up to \$350,000 and sentenced to up to 3 years in prison. Companies can be fined up to \$10 million.
- b) **Violations of the Clayton Act:** Individuals injured by antitrust violations can sue the violators in court for three times the amount of damages actually suffered. These are known as treble-damages, and can also be sought in class-action antitrust lawsuits. Damages also include attorneys' fees and other litigation costs.
- c) **Violations of the Federal Trade Commission Act:** The FTC has the authority to issue an order that the violator stop its anticompetitive practices.
- d) **Violations of State Antitrust Laws:** State antitrust laws often prohibit the same kinds of conduct as the federal antitrust laws. As a result, the penalties state laws impose are also similar and can range from criminal to civil sanctions.

XVII. Method of Payment Factor.

Complainant believes Ms.Sophir came into her current position just to dispose of this instant case. The one factor which was heavily in favor of the drivers claim to be classified as employees was ruled as neutral. Now the Complainant will dismantle the so called neutrality of the Method of Payment Factor as he did with the Control Factor in previous pages. Ms.Sophir states in her Advice Memorandum, "The second factor to which the Board gives significant weight in the taxicab and shared-ride industries is "the relationship between the company's compensation and the amounts of fares collected". Pure flat-fee arrangements, whereby drivers retain all fares and pay the company flat fees to operate during a fixed time period generally support independent-contractor status. Conversely, commission-based arrangements, where the company receives portions of drivers' fares, generally support the inference of employee status. These conclusions are based on the inferences that, in flat-fee arrangements, the company lacks motivation to control the manner and means of drivers' work, giving drivers significant entrepreneurial opportunity because they retain all fares; whereas in commission-based compensation, in which the company's earnings depend upon driver production, the company has a greater incentive to control drivers' activities, thus giving them less entrepreneurial opportunity. The actual impact of these various fee arrangements on a company's motivation to control drivers' activities and, thus, these inferences, are questionable. Accordingly, the method of payment, whether flat-fee or commission-based, should not be considered as an indicium of control. Rather, the *actual* control exerted by the company on drivers' entrepreneurial opportunity should be determinative of employee or independent-contractor status. In any event, even under current Board law, the inferences behind the method-of-payment analysis may be overcome by the facts of particular cases. This is such a case. Uber retained a percentage of fares paid by riders rather than charging drivers a flat fee for the opportunity to use the App. But the fundamental features of the Uber system overcome any inference of employer control and diminished entrepreneurial opportunity for drivers. Thus, notwithstanding any incentive there may have been to control drivers, Uber did not in fact control them (as discussed above), but, rather, relied on customers to maintain quality and insure repeat business without the need for control by Uber. In addition, the absence of a flat fee here actually *increased* drivers' entrepreneurial opportunity, since this made it easier to take advantage of the

unlimited freedom they had to work for competitors or pursue other ventures and drive for Uber only when it suited them. In light of drivers' independence from Uber's control and their significant entrepreneurial opportunity, we conclude that the method-of-payment factor is neutral in the particular circumstances here".

RESPONSE: As the Board ruled that Uber has overcome the inferences behind the method-of-payment analysis by the facts of this particular case because Uber did not controlled the drivers, the complainant is asserting that if the Board agrees with the Complainant's arguments in previous pages on the control factor, automatically the method of payment factor tilts in the favor of the drivers rather than being a neutral factor.

XVIII. Other Factors.

The Board ruled, "Drivers provided the "principal instrumentality" of their work, the car, the control of which afforded them significant entrepreneurial opportunity. Drivers were also responsible for chief operating expenses such as gas, cleaning, and maintenance for their cars. Uber provided only the App, commercial liability insurance, and minor assistance such as reimbursement for the costs of cleaning spills and repairing damage caused by riders. Drivers shouldered significant risk of loss, since they invested significant capital and time to use the App, and fare earnings could fluctuate depending on where and when drivers logged in. Given that the drivers provided the cars and incurred most of the expenses associated therewith, the instrumentalities factor strongly favors independent-contractor status".

RESPONSE: Board is again totally incorrect when it ruled that Drivers provided the "principal instrumentality" for their work. The "principal instrumentality" in this case is the Uber App which is now worth more than \$100 Billion now and Uber also provided commercial liability insurance. Uber App is considered to be equipment. Uber App is classified as Property Plant & Equipment by Generally Accepted Accounting Principles (GAAP or U.S. GAAP) is the accounting standard adopted by the United States Securities and Exchange Commission (SEC). Please see Page 164 to 197 of **Exhibit-D** for a detailed analysis of Property Plant & Equipment (PP&E). PP&E is a non-current, tangible capital asset shown on the balance sheet of a business and used to generate revenues and profits. PP&E plays a key part in the financial planning and analysis of a company's operations and future expenditures, especially with regards to capital expenditures. PP&E can include machinery, equipment, vehicles, buildings, land, office space, office equipment, and furnishings, among other things. If a company produces machinery (for sale), that machinery does not classify as property, plant, and equipment but the machinery used to produce the machinery for sales is PP&E. Further Financial Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 6, defines a PP&E as:

- a) PP&E have estimated useful lives of 2 years or more;
- b) PP&E are not intended for sale in the ordinary course of operations;
- c) PP&E have been acquired or constructed with the intention of being used or being available for use by the entity.

Further Uber has been claiming the Uber App as a PP&E on its Balance Sheet which they have submitted to IRS and Uber is spending millions of dollars every year in development, maintenance and re-engineering of the Uber

App and Uber App is generating billions of dollars in income for Uber every year. Will Uber sell its App for \$1 Billion or \$5 Billion or even for \$10 Billion? Uber will not sell its App to anyone at all. If you put together all the Uber drivers' investment which they made in order to work for Uber, it is not even 1% of the value of the Uber's investment in its App which is worth more than \$100 Billion. Even if the drivers have Ferraris and Rolls Royce's to use for driving for Uber, it is equal to a piece of junk because without the Uber App they cannot use their Ferraris and Rolls Royce's to work for Uber. Uber has made more than 99% investment in order for the drivers to be on the road to work for them. Again Jayme Sophir falls flat on her face with her rigged ruling on the "principal instrumentality" factor and this factor is also heavily in favor of the drivers to be classified as employees. In regards to the "supervision" factor, complainant has already described how Uber supervised its drivers and how Uber employees filed sworn declarations and testified under oath at Cook County Commission on Human Rights about how they supervised and controlled the drivers. Please see the 673 Page [Exhibit A](#). Again Jayme Sophir falls flat on her face with her rigged ruling on the "supervision" factor, and this factor is also heavily in favor of the drivers to be classified as employees. With regard to the parties' self-assessment of their relationship, the complainant has signed no written contract with Uber and he only entered into an oral agreement with Uber that he will be an employee of Uber and this matter is pending in United States District Court for Northern District of Illinois, Eastern Division in *Mohammed v Uber Technologies Inc.*, Case # 16-CV-2537. Complainant has not entered into any kind of arbitration agreement with any of Uber. As a matter of fact, the Complainant has not entered into the so called Service Agreement which is also referred to as "Rasier Agreement" by the Uber. Complainant came across the copy of this so called "Rasier Agreement", only around February of 2017 through Cook County Commission on Human Rights. Complainant never created a username and password in order to login onto the UberX Platform. Complainant's username and password in order to login into UberX platform was created by the Driver Support Representative at the Uber's office which was located at 300 North Elizabeth, Chicago, IL 60607. The Driver Support Representative never informed the Complainant at any occasion during his orientation and subsequent hiring about the existence of the "Rasier Agreement". The Driver Support Representative handed the iPhone back to the Complainant after logging onto the UberX platform. Since the Complainant did not create the username and the password, the electronic signature, if there is any, does not belong to the Complainant and it belongs to the Driver Support Representative. The Uber Driver App is not available in App Store for iPhone and Google Play for the Android phones. The Uber Driver App is a Third Party App owned by Uber and it can only be provided by Uber's staff or by a Driver Support representative for downloading by drivers via a hyperlink. Just recently Uber has published the hyperlink to download the Driver App on its website. This hyperlink was not available on Uber's website at the time of the hiring of the Complainant as this was a very new initiative and at that time Uber did not had the Driver App for Android phones. As a matter of fact, this hyperlink to download the Driver App was not available on Uber's website until after the Uber wrongfully terminated the Complainant's employment. The Complainant went to Uber's office as late as May, 2015 to download the Driver App again, as it was deleted somehow from his iPhone. A Driver Support Representative downloaded the Driver App on the Complainant's

iPhone. The Driver Support representative while creating the Complainant's username and password had told the Complainant that the provision to use own iPhone was just initiated a week back and Uber is still developing the App for Android phones. The Driver Support Representative after creating the Complainant's username and password had told the Complainant that he will be able to save \$40.00/month since he was using his own iPhone. In fact, Uber provides the drivers with iPhone which already has the Uber Driver App downloaded and it is ready to go. Uber charges \$40.00/month if the driver is leasing the iPhone from them. Uber also charges a \$100.00 deposit for the iPhone. Most of the time the Driver Support Representatives at the Uber's office, create username and password for new drivers' and also accepts all the terms and conditions of the "Rasier Agreement" without giving an opportunity to the drivers to review the "Rasier Agreement". Complainant is a witness to this on numerous occasions on his visits to Uber's office. The "Rasier Agreement" submitted by Uber is fraudulent and it is not even worth the price of the paper it's printed on and hence this "Rasier Agreement" should be set aside. This "Rasier Agreement" is a figment of the Uber's imagination which is only visible to them. Uber's claim that by downloading Uber's App, drivers have electronically signed on the "Rasier Agreement" is preposterous as more than 50% of Uber's drivers are immigrants who speak little English or no English and these drivers have never heard of a term "Agreement" in their entire life leave alone that they knew that when Uber's Representatives downloaded Uber's App on their iPhone and Android Phone, or gave them iPhone belonging to Uber on lease with Uber App already downloaded on such iPhone, or when drivers downloaded Uber Apps on their iPhone or Android Phone, they were electronically signing on "Rasier Agreement". Even native American drivers who were born and brought in America did not knew that that when Uber's Representatives downloaded Uber's App on their iPhone and Android Phone, or gave them iPhone belonging to Uber on lease with Uber App already downloaded on such iPhone, or when native American drivers downloaded Uber App on their iPhone or Android Phone, they were electronically signing on "Rasier Agreement". The requisite elements that must be established to demonstrate the formation of a legally binding contract are (1) offer; (2) acceptance; (3) consideration; (4) mutuality of obligation; (5) competency and capacity; and, in certain circumstances, (6) a written instrument. None of the 6 requisite elements are present in the instant case. Further the Complainant has paid his share of Social Security and Medicare Tax for the wages he earned from Uber by filing an IRS Form-8919 and IRS is now going after Uber to collect employer's share of Social Security and Medicare Tax on behalf of the complainant. If the Board needs the Complainant's Tax Returns, he will provide it to the Board. The fact that Uber provided no benefits, paid leave, or holiday pay has no effect on this case and in fact that is the one reason, why Uber is misclassifying employees as Independent Contractor to save money on benefits, taxes, sick leave, holiday pay etc. Again Jayme Sophir falls flat on her face with her rigged ruling on the "fifth" factor, and this factor is also heavily in favor of the drivers to be classified as employees.

XIX. Board ruled several Factors that point toward Employee Status for Drivers.

Since all the previous five factors are in favor of the drivers to be classified as employees, now let's discuss the factors which the Board ruled were in favor of the drivers. Board ruled that, "One factor that supports employee

status is that no special skills or experience were required to begin driving for Uber”. That is one more factor in favor of drivers to be classified as employees. Board further ruled, “That drivers did not work in a distinct occupation or business, but worked as part of the Employer’s regular business of transporting passengers”. That is another factor in favor of the drivers to be classified as employees. Further on Page # 13 of the Advice Memorandum, Jayme Sophir referred Uber as “Employer” of the drivers and finally she uttered the truth. The Complainant would like to stress that he has waged a very grim battle against Uber all by himself and he is litigating this case without the help of legal counsel and its time now for the Board to shove justice down Uber’s throat. Complainant is not fighting just for himself but he is fighting for every employee who has been misclassified as an Independent Contractor. Uber has stolen money and benefits which belonged to the drivers and their families and more importantly their children. If Jayme Sophir thinks that she is some kind of a celebrity, I would like to remind her, that she is not a celebrity but a Public Official/Public Servant of a government of the people, by the people and for the people. When Public Officials violate Laws or Constitution of the United States or any other Law; people will ask questions and they will ask hard questions, both inside the courtroom and outside the courtroom, and why the people will ask such questions, because we are the people and because this government is the government of the people, by the people and for the people. Dissent which is often unpopular needs to be heard as it shapes public policy in the long run and in fact dissent has shaped United States. On the broadest level, dissent is simply resisting the “powers that be,” going against the grain. But the powers that be shift over time, so this means that our definition of dissent has to be rather fluid. When dissenters accomplish their goals, they create a new paradigm, a new reality, and most often, that new reality generates its own dissenters. For example, once patriots gained the upper hand during the American Revolution, the previous powers that be, the Loyalists, found themselves in the curious role of dissenters. Dissent, of course, predates the United States. Complainant didn’t created dissent. Dissent created the United States. But once the United States was established, we were the first country to guarantee in writing the right to dissent, and Americans, taking that right seriously, have developed a long history of using the right to dissent to push the envelope and create change. In this case the Complainant is pushing that envelope against Uber who has rooms full of wads of \$100 bills stolen from the drivers and a bevy of lawyers who are litigating against this Pro Se Complainant in various Courtrooms across the length and breadth of this country. Based on the forgoing reasons and arguments by the complainant and pursuant to common-law agency test of the Board, the complainant and the other Uber drivers are employees of Uber. Complainant is requesting the General Counsel to grant his appeal, classify the complainant as an employee of Uber and direct the Regional Director to issue a complaint in accordance with the NLRA.

Dated:- July 1, 2019

Respectfully Submitted,
/s/ Abdul Mohammed,
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

October 21, 2019

ABDUL MOHAMMED
258 E BAILEY RD APT C
NAPERVILLE, IL 60565-1439

Re: Uber Technologies Inc.
Case 13-CA-163062

Dear Mr. Mohammed:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied.

Your charge alleges that Uber Technologies, Inc. violated Section 8(a)(1) of the National Labor Relations Act (Act) by telling employees that they would be terminated if they attempted to discuss working conditions with other employees, and then discharging you for engaging in protected concerted activities. Contrary to your contentions on appeal, there is insufficient evidence to establish that you are a statutory employee as defined by Section 2(3) of the Act. Rather, the evidence established that you are an independent contractor, and therefore not covered by the Act. *SuperShuttle DFW, Inc.*, 367 NLRB No. 75 (2019). Nothing raised on appeal by you changes this determination. Accordingly, your appeal is denied, and further proceedings are deemed unwarranted.

Sincerely,

Peter Barr Robb
General Counsel

A handwritten signature in black ink that reads "Mark E. Arbesfeld". The signature is written in a cursive, flowing style.

By: _____

Mark E. Arbesfeld, Director
Office of Appeals

cc: PETER SUNG OHR
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